

ENTERED ON DOCKET

DATE **FEB 19 1993** **E D**

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEB 17 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

LARRY KELLEY, Nominee,

Plaintiff,

v.

STATE BANK & TRUST, N.A.,

Defendant,

THE RESOLUTION TRUST CORPORATION
AS RECEIVER FOR FIRST FEDERAL
SAVINGS & LOAN ASSOCIATION OF
COFFEYVILLE, KANSAS,

Intervenor.

Case No. 92-C-472-E

ORDER OF DISMISSAL

This matter is before the Court on the parties' Stipulation for Dismissal Without Prejudice. The Court, having reviewed said Stipulation and being fully advised in the premises, finds that all claims asserted in this matter by or on behalf of State Bank should be dismissed without prejudice.

IT IS THEREFORE ORDERED that all claims asserted herein by or on behalf of State Bank are hereby dismissed without prejudice.

BY JAMES O. LEE, JR.

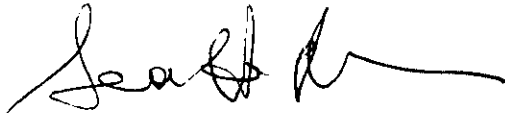
UNITED STATES DISTRICT JUDGE

APPROVED:



JOHN H. TUCKER, OBA #9110
L. J. FULTON, OBA #3177
RHODES, HIERONYMUS, JONES, TUCKER & GABLE
2800 Fourth National Bank Building
Tulsa, Oklahoma 74119-5430

Attorneys for Plaintiff, LARRY KELLEY



TONY W. HAYNIE, OBA #11097
SEAN H. McKEE, OBA #14277
CONNER & WINTERS
2400 First National Tower
15 East Fifth Street
Tulsa, Oklahoma 74103-4391

Attorneys for Defendant,
STATE BANK & TRUST, N.A.



JAMES M. REED, OBA #7466
R. MARK PETRICH, OBA #11956
HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172

Attorneys for Intervenor,
THE RESOLUTION TRUST CORPORATION AS RECEIVER
FOR FIRST FEDERAL SAVINGS & LOAN
ASSOCIATION OF COFFEYVILLE, KANSAS

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE FEB 19 1993

EUNICE Y. ADELEGAN,
Plaintiff,

vs.


NEWSPAPER PRINTING
CORPORATION, an Oklahoma
corporation,

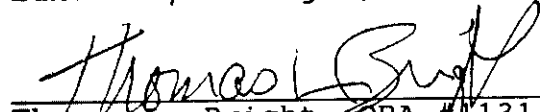
Defendant.

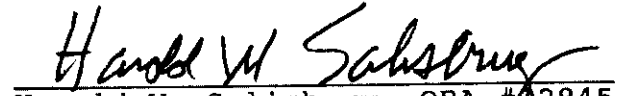
Case No. 92-C-572E

STIPULATION OF DISMISSAL WITH PREJUDICE

Pursuant to Rule 41 of the Federal Rules of Civil Procedure, the parties to this action hereby stipulate that any and all causes of action and claims against the Defendant, Newspaper Printing Corporation, are hereby dismissed with prejudice. It is further stipulated by the parties to this action that each party shall be responsible for their own attorneys' fees and costs incurred in this matter.

 02-18-93
Eunice Y. Adelegan, Plaintiff


Thomas L. Bright, OBA #1131
7030 South Yale, Suite 408
Tulsa, Oklahoma 74136
(918) 492-0008
ATTORNEY FOR PLAINTIFF


Harold W. Salisbury, OBA #12845
Susan E. Major, OBA #15298
Newspaper Printing Corporation
315 South Boulder
Tulsa, Oklahoma 74103
(918) 581-8508

and

David P. Page, OBA #6852
BOONE, SMITH, DAVIS, HURST &
DICKMAN
500 ONEOK Plaza
Tulsa, OK 74103
(918) 587-0000

ATTORNEYS FOR DEFENDANT

ENTERED ON DOCKET

DATE ~~FEB 19 1993~~

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 17 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JAMES NORTON,

Plaintiff,

vs.

No. 92-C-476-E

DR. JOHN WHITE, et al.,

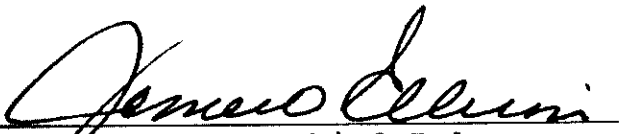
Defendants.

JUDGMENT

This action came on for consideration before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS THEREFORE ORDERED that the Plaintiff take nothing from the Defendant and that the action be dismissed on the merits.

ORDERED this 17th day of February, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

FEB 19 1993

FILED

FEB 17 1993

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

JANICE CARIKER,

Plaintiff,

v.

No. 91-C-669-B

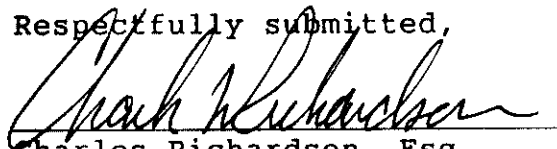
HERFF JONES, INC., an
Indiana corporation doing
business in the State of
Oklahoma, COLLEGIATE CAP
& GOWN, a division of Herff
Jones, Inc., and BOB SCHULTZ
an individual.

Defendants.

JOINT STIPULATION OF
DISMISSAL WITH PREJUDICE

Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, the plaintiff Janice Cariker, hereby stipulates with the defendants Herff Jones, Inc., Collegiate Cap & Gown and Bob Schultz, that this action shall be dismissed with prejudice. Each party is to bear its own costs and attorney fees.

Respectfully submitted,


Charles Richardson, Esq.
Richardson & Meier
6846 South Canton, Suite 200
Tulsa, Oklahoma 74136

ATTORNEYS FOR PLAINTIFF

Madalene A.B. Witterholt

LEONARD COURT
MADALENE A.B. WITTERHOLT
CROWE & DUNLEVY
A Professional Corporation
Suite 500
321 South Boston
Tulsa, Oklahoma 74103-3313
(918) 592-9800

ATTORNEYS FOR DEFENDANTS
HERFF JONES AND COLLEGIATE CAP &
GOWN

Fred C. Cornish

Fred Cornish, Esq.
321 S. Boston Ave.
Suite 917
Tulsa, Oklahoma 74103

ATTORNEY FOR DEFENDANT
BOB SCHULTZ

149.93A.MAW

ENTERED ON DOCKET
FEB 18 1993
DATE _____

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RAYMOND ALLEN REAVIS and
TIMOTHY PAUL PETERSON,

Plaintiffs,

vs.

Case No. 92-C-992 C

THE CITY OF CLAREMORE,
OKLAHOMA, a municipal
corporation; TOM POOL, MAYOR
OF THE CITY OF CLAREMORE,
OKLAHOMA; DALE MARLAR, CITY
ATTORNEY FOR THE CITY OF
CLAREMORE, OKLAHOMA,

Defendants.

FILED

FEB 17 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

This matter comes before the Court on Defendants' Motion To Dismiss Or In The Alternative Defendants' Motion For Summary Judgment and supporting brief (hereinafter "Defendants' Motion"), and on Defendants' Application For Order Granting Defendants' Motion To Dismiss Or In The Alternative Summary Judgment.

Having reviewed the pleadings on file, the Court FINDS:

- A. Defendants' Motion was filed December 8, 1992;
- B. Plaintiffs' have been granted three (3) extensions of time in which to respond to Defendants' Motion, with the latest and final deadline being January 27, 1993;
- C. As of February 2, 1993 Plaintiffs have not responded to Defendants' Motion, nor have any additional extensions of time been sought or granted;
- D. Pursuant to Local Rule 15, because Plaintiffs have not responded to Defendants' Motion, the matters set forth in

Defendants' Motion and Brief are deemed confessed;

- E. As a matter of law, Plaintiffs' Complaint fails to state a cause of action for which relief may be granted under any of their various theories of recovery under 42 U.S.C. §§ 1983 and 1985, including violation of the Fourth Amendment, violation of the Fifth Amendment, violation of Plaintiffs' right to speedy trial, deprivation of liberty and/or property interests without due process, violation of equal protection as guaranteed by the Fourteenth Amendment and conspiracy.

THEREFORE, it is hereby ORDERED that Plaintiffs' Complaint is DISMISSED WITH PREJUDICE.


H. Dale Cook,
United States District Court Judge

FILED

FEB 18 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PROTECTION MUTUAL INSURANCE)
COMPANY,)

Plaintiff,)

vs.)

REXARC, INCORPORATED and)
REXARC INTERNATIONAL, INC.,)

Defendants.)

ENTERED ON DOCKET
DATE FEB 18 1993

Case No.: 92-C-365-DE ✓

ORDER OF DISMISSAL

UPON Application for Order of Dismissal filed this date by Plaintiff in the above-captioned case, this Court finds it to be in the best interest of each of said parties for this Court to order dismissal with prejudice to refile of this action herein for the reason that all claims by Plaintiff against said Defendant have been concluded by agreement between the parties. Each party is to bear their respective costs and fees.

WHEREFORE, this Court orders dismissal of the above entitled cause with prejudice and with each party to bear their respective costs and fees.


UNITED STATES DISTRICT JUDGE

FEB 18 1993
FILEDIN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEB 17 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

vs.

LEONARD GORDON,

Defendant.

CIVIL ACTION NO. 89-C-552-E

AGREED JUDGMENT AND ORDER OF PAYMENT

Plaintiff, the United States of America, having filed its Complaint herein, and the defendant, having consented to the making and entry of this Judgment without trial, hereby agree as follows:

1. This Court has jurisdiction over the subject matter of this litigation and over all parties thereto. The Complaint filed herein states a claim upon which relief can be granted.

2. The defendant hereby acknowledges and accepts service of the Complaint filed herein.

3. The defendant hereby agrees to the entry of Judgment in the principal sum of \$10,000.00, plus interest thereafter at the rate of 4% per annum until judgment, plus interest thereafter at the legal rate until paid, plus costs of this action, until paid in full.

4. Plaintiff's consent to the entry of this Judgment and Order of Payment is based upon certain financial information which defendant has provided it and the defendant's express representation to Plaintiff that he is unable to presently pay the amount of indebtedness in full and the further representation

of the defendant that he will well and truly honor and comply with the Order of Payment entered herein which provides terms and conditions for the defendant's payment of the Judgment, together with costs and accrued interest, in regular monthly installment payments, as follows:

(a) Beginning on or before the 10th day of February, 1993, the defendant shall tender to the United States a check or money order payable to the U.S. Department of Justice, in the amount of \$100.00 and a like sum on or before the 10th day of each following month until the entire amount of the Judgment, together with the costs and accrued postjudgment interest, is paid in full.

(b) The defendant shall mail each monthly installment payment to: United States Attorney, Debt Collection Unit, 3600 U.S. Courthouse, 333 West 4th Street, Tulsa, Oklahoma 74103.

(c) Each said payment made by defendant shall be applied in accordance with the U.S. Rules, i.e., first to the payment of costs, second to the payment of postjudgment interest (as provided by 28 U.S.C. § 1961) accrued to the date of the receipt of said payment, and the balance, if any, to the principal.

5. Default under the terms of this Agreed Judgment will entitle the United States to execute on this Judgment without notice to the defendant.

6. The defendant has the right of prepayment of this debt without penalty.

7. The defendant shall keep the United States currently informed in writing of any material change in his financial situation or ability to pay, and of any change in his employment, place of residence or telephone number. Defendant shall provide the United States with an update of his financial situation within six months from the date of this Agreement. Defendant shall provide such information to the United States Attorney at the address set forth in (b) above.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendant, LEONARD GORDON, in the principal amount of \$10,000.00, plus interest at the rate of 4% until judgment, plus interest thereafter at the current legal rate of 3.45 percent per annum until paid, plus the costs of this action.


UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

TONY M. GRAHAM
United States Attorney


KATHLEEN BLISS ADAMS, OBA #13625
Assistant United States Attorney


LEONARD GORDON

14

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 16 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

89-C-632-B

EOO 2/17/93

NELLIE LOU LILLIE,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

AMENDED JUDGMENT

This action came to trial before the court. The issues have been tried and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that Plaintiff, Nellie Lou Lillie, is granted judgment against the Defendant, United States of America, in the amount of \$36,140.45 plus costs.

Dated this 16th ^{February, 1993} day of ~~November, 1992.~~


JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 16 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

NELLIE LOU LILLIE,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

89-C-632-B

EDD 2/17/93

ORDER AMENDING FINDINGS OF FACT AND CONCLUSIONS OF LAW

This order pertains to Plaintiff's Rule 59 Motion (Docket #71)¹ and the Response of the United States of America to Plaintiff's Rule 59 Motion (#74). Plaintiff's Rule 59 Motion is granted in part and denied in part.

The Findings of Fact and Conclusions of Law filed by the court on November 2, 1992, are modified as follows:

Finding of Fact No. 17: Dr. Terrill H. Simmons stated on July 24, 1990 that Plaintiff was totally disabled from August 15, 1987 until December 13, 1987 while she was in a cast. Dr. Simmons also stated that plaintiff was totally disabled from May 3, 1990 through May 14, 1990, because of additional surgery to remove a metal appliance from her ankle which had been placed there to fix the fractures.

Finding of Fact No. 18: The rate of pay Plaintiff would have received from August 17, 1987 until October 11, 1987 was \$12.49 per hour for a forty-hour work week. The rate of pay she would have received from October 12, 1987 to December 14, 1987 was \$12.62 per hour for a forty-hour work week. The rate of pay she would have received

¹ "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

from May 3, 1990 to May 14, 1990 was \$14.55 per hour for a forty-hour work week.

Finding of Fact No. 21: The amount of Plaintiff's lost wages from August 17, 1987 until October 11, 1987 was \$3,996.80. The amount of Plaintiff's lost wages from October 12, 1987 to December 14, 1987 was \$4,038.40. The amount of plaintiff's lost wages from May 3, 1990 to May 14, 1990 was \$1,164.00. The total amount of lost wages from her fall at the post office was \$9,199.20.

Finding of Fact No. 23: Plaintiff will incur \$1,000.00 in medical expenses for future orthopedic care resulting from her fall, which will cost \$50.00 per visit to the orthopedist once a year for the next twenty years. Plaintiff will incur \$720.00 in medical expenses for x-rays at a cost of \$36.00 per visit at each annual visit to the orthopedist for the next twenty years.

Finding of Fact No. 24: Plaintiff will incur \$7,800.00 in expenses as a result of her fall to purchase the drug feldene, at a cost of \$65.00 every two months or \$390.00 per year for the next twenty years. Reduced to present value assuming a 3% discount rate over the twenty-year period, the value of the orthopedic care, the x-rays, and the drug purchases is \$5,270.99.

Finding of Fact No. 27: Plaintiff has been damaged as the result of her fall in the total amount of \$72,280.89.

Finding of Fact No. 34: In comparing the respective negligence of Plaintiff and Defendant, the court finds that Plaintiff was 50% negligent and Defendant was 50% negligent. Plaintiff's percentage of negligence was not based on her ability to see the spalled area, but rather her descent down the stairs without using ordinary care under the

circumstances where lighting was inadequate.

Conclusion of Law No. 14: Plaintiff shall recover from the Defendant one-half of her damages of \$72,280.89, or \$36,140.45 plus costs.

Dated this 16th day of February, 1993.


JOHN LEO WAGNER
UNITED STATES MAGISTRATE JUDGE

ENTERED ON DOCKET

DATE 2-17-93

FILED

FEB 16 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

In re:

LLOYD and SHELIA ANN NOLAN,
Debtors.

Case No. 92-01548-C

LLOYD and SHELIA ANN NOLAN,

Plaintiffs/Appellants

vs.

ROUSSEAU MORTGAGE CORPORATION,

Defendants/Appellees

Adv. No. 92-0207-C

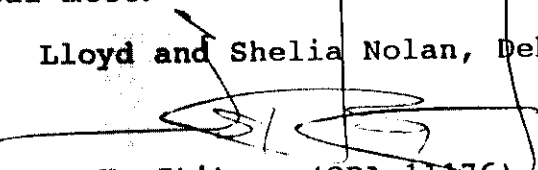
District Court
Appeal No. 92-C-1051-E

STIPULATION OF VOLUNTARY DISMISSAL PURSUANT TO
FEDERAL RULE OF BANKRUPTCY PROCEDURE 8001(c)(2)

Appellant and Appellee hereby stipulate to the voluntary dismissal of the above captioned bankruptcy appeal for the reason that events transpiring subsequent to the filing of said appeal have rendered said Appeal moot.

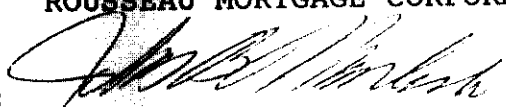
Lloyd and Shelia Nolan, Debtors/Appellants

by:


Ty H. Stites (OBA 11176)
Attorney for the Debtors/Appellants
P. O. Box 700243
Tulsa, OK 74170-0243
(918) 747-3100

ROUSSEAU MORTGAGE CORPORATION, Appellee

by:


John B. Wimbish (OBA 1756)
Attorney for Defendant/Appellee
5314 South Yale
Suite 200
Tulsa, OK 74135

DATE ~~FEB 17 1993~~IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MICHAEL NORMAN,
Petitioner,
vs.
DAN REYNOLDS, WARDEN,
Respondents.

No. 93-C-16-E

FILED

FEB 12 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA**O R D E R**

Now before the court is Petitioner's application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. It has come to the court's attention that Petitioner was convicted in Pittsburg County, Oklahoma, which is located within the territorial jurisdiction of the Eastern District of Oklahoma. Therefore, in the furtherance of justice, this matter may be more appropriately addressed in that district.

Accordingly, pursuant to 28 U.S.C. § 2241(d), Petitioner's application for a writ of habeas corpus is hereby transferred to the Eastern District of Oklahoma for all further proceedings.

IT IS SO ORDERED this 12th day of February, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE FEB 16 1993

RICHARD T. SONBERG,

Plaintiff,

vs.

Case No. 92-C-994-B ✓

CHANGING, INC., a corporation
d/b/a Consignment Assets
Liquidation Center of America,
Inc., Tim Studebaker, Russ
Smith, Jerry Meek, Auto Trade
Center, Inc. and Albright Title
& Trust Company,

Defendants.

FILED

FEB 11 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DEFAULT JUDGMENT AGAINST CHANGING, INC.

Now, on this 11 day of February, 1993, there comes before the Court the Plaintiff's motion for partial judgment, including a motion for default judgment upon the Plaintiff's claim for actual damages against the corporate defendant, Changing, Inc., and Oklahoma corporation, d/b/a Consignment Assets Liquidation Center of America, Inc.


Upon examination of the file, the Court determines that the Plaintiff has properly executed service of summons and the original complaint in this action upon Changing, Inc. through service by certified mail upon the Secretary of State for the state of Oklahoma on the 3rd day of December, 1992; further, that prior efforts to serve this corporation at its registered and principal office within the State of Oklahoma could not be accomplished since said office within the State of Oklahoma could not be accomplished since said office had been abandoned without a forwarding address.

22

It appearing from the file in this action that the defendant Changing, Inc. has wholly failed to answer or otherwise respond to the Plaintiff's complaint within the time required, said defendant is in default and the Plaintiff is entitled to have a judgment entered upon his claim for actual damages in the amount of \$11,000, as prayed for in his First Claim for Relief.

Now, therefore, it is the Order of this Court that the Plaintiff, Richard T. Sonberg, have a judgment by default in his favor and against the corporate defendant, Changing, Inc. in the amount of \$11,000.00. Costs are likewise assessed against the Defendant, Changing, Inc., if timely applied for pursuant to Local Rule 6. It is further ordered that the remaining claims of the Plaintiff against Changing, Inc., and other Defendants in this action shall be retained under the jurisdiction of this Court for future consideration and disposition.

IT IS SO ORDERED THIS 11th DAY OF FEBRUARY, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
FEB 16 1993
DATE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
FEB 11 1993

Richard M. Lawrence, Clerk
U. S. District Court
Northern District of Oklahoma

BRIAN D. DUBUC,

Plaintiff,

v.

PATTY R. MCKENZIE, BILL
MUSSEMAN, OFFICERS LEWIS
& BOYD, Tulsa Police Department

Defendants.

Case No. 92-C-171-B

ORDER

This matter comes on for consideration of the Report and Recommendation of the U.S. Magistrate Judge, filed herein on December 8, 1992, and Plaintiff's Request To Set Aside Recommendation, Lift Stay, and Proceed On The Merits.¹

On May 22, 1992, the Magistrate Judge granted Plaintiff's Motion For Stay of Proceedings and the Clerk of the Court was directed to mail Plaintiff a copy of the current docket sheet. The Magistrate Judge's Order stayed the matter pending an application from any party to lift the stay and proceed with the case, providing that if no such application is filed within six months, the case will be subject to dismissal for lack of prosecution.

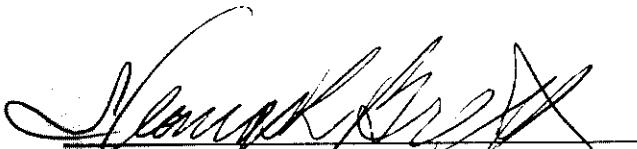
On December 8, 1992, after acknowledging that no application

¹ The Court allows Plaintiff's pleading, received by the Clerk of the Court on December 29, 1992, to be filed as of that date and will be considered herein as if timely filed. The Court allows this because of Plaintiff's inmate status, pro se status, and the inherent mail problem for inmates being frequently transferred.

to lift stay had been filed within six months from May 22, 1992, the Magistrate Judge entered his Report And Recommendation, recommending that this case should be dismissed without prejudice for failure to prosecute.

The Court adopts and affirms the Report and Recommendation of the Magistrate Judge. The Court concludes this case should be and the same is hereby DISMISSED without prejudice for failure to prosecute.

IT IS SO ORDERED this 11th day of February, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

DATE FEB 16 1993

FILEDFEB 11 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMAIN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

CONSUELO MILES,

Plaintiff,

v.

SPRINGER CLINIC,

Defendants.

92-C-0577-B

ORDER

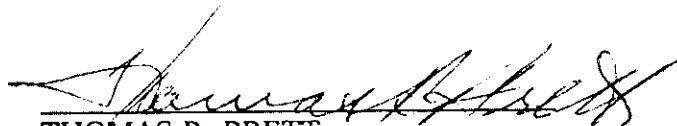
The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed January 19, 1993 in which the Magistrate Judge recommended that default judgment be entered against Plaintiff in this action; all in accord with Rule 16(f) and Rule 37(d), Federal rules of Civil Procedure.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate Judge should be and hereby is adopted and affirmed.

It is, therefore, Ordered that default judgment is entered against Plaintiff in this action; all in accord with Rule 16(f) and Rule 37(d), Federal Rules of Civil Procedure.

SO ORDERED THIS 11th day of Feb., 1993.

A handwritten signature in dark ink, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET
DATE FEB 16 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
FEB 11 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

THRIFTY RENT-A-CAR SYSTEM,

Plaintiff,

v.

ALTOLEW, INC., a foreign
corporation; and TOMMY TUTEN,
an individual,

Defendants.

No. 91-C-273-B

O R D E R

Before the Court for consideration is the Plaintiff's Motion to Reopen Case. Upon review of the record and the statements of the parties, the Court concludes Plaintiff's motion to reopen should be and is hereby GRANTED.

IT IS SO ORDERED, this 11 day of February, 1993.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET

DATE FEB 16 1993

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 11 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

THRIFTY RENT-A-CAR SYSTEM,

Plaintiff,

v.

ALTOLEW, INC., a foreign
corporation; and TOMMY TUTEN,
an individual,

Defendants.

No. 91-C-273-B

JUDGMENT

The Court has before it for consideration the Motion of the Plaintiff, Thrifty Rent-A-Car System, Inc., for the entry of a Judgment pursuant to the terms of a Settlement and Release Agreement entered into between Plaintiff and Defendants as of the 22nd day of November, 1991 ("the Settlement Agreement").

The Court has considered all matters relevant to a determination of Plaintiff's Motion. In particular, the Court has reviewed the Settlement Agreement and has considered the facts presented by Plaintiff in support of its right to the entry of this Judgment.¹ The Court finds that, pursuant to the terms of the Settlement Agreement, and under the facts, Plaintiff is entitled to the Judgment reflected herein.

Accordingly, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that

¹ As required by the settlement agreement, Defendants have not objected to the Plaintiff's motion for entry of judgment. Defendants response to the Plaintiff's motion merely states that Defendants have "communicated a compromise offer of settlement to the Plaintiff, which the Plaintiff has rejected"

Judgment be, and hereby is, entered in favor of the Plaintiff, Thrifty Rent-A-Car System, Inc., and against the Defendants, Altolew, Inc. and Tommy Tuten, jointly and severally, in the amount of Fifty-Three Thousand Dollars (\$53,000). This judgment shall bear interest at the rate of 3.45% per annum until paid.

IT IS SO ORDERED this 11 day of February, 1993.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", is written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
FEB 16 1993

GLORIA DENISE CURLS,
Petitioner,

vs.

JOY HADWINGER,
Respondent.

No. 92-C-746-E

FILED

FEB 12 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Petitioner Curls has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Respondent has filed a motion to dismiss. In her motion, Respondent argues that Curls' petition contains unexhausted grounds for relief and should therefore be dismissed. The court agrees.

To exhaust a claim, Curls must have "fairly presented" that specific claim to the Oklahoma Court of Criminal Appeals. See Picard v. Conner, 404 U.S. 270, 275-76 (1971). The exhaustion requirement is based on the doctrine of comity, which "teaches that one court should defer action on causes properly within its jurisdiction until the courts of another sovereignty with concurrent powers, and already cognizant of the litigation, have had an opportunity to pass upon the matter." Darr v. Burford, 339 U.S. 200, 204 (1950). Requiring exhaustion "serves to minimize friction between our federal and state systems of justice by allowing the State an initial opportunity to pass upon and correct alleged violations of prisoners' federal rights." Duckworth v. Serrano, 454 U.S. 1, 3 (1981) (per curiam).

In Rose v. Lundy, 455 U.S. 509 (1982), the United States Supreme Court held that a federal habeas corpus petition that

contains exhausted and unexhausted grounds for relief must be dismissed by the district court. The Court stated:

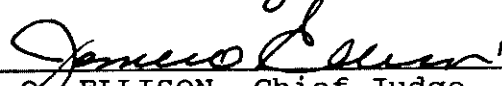
In this case we consider whether the exhaustion rule in 28 U.S.C. § 2254(b), (c) requires a federal district court to dismiss a petition for a writ of habeas corpus containing any claims that have not been exhausted in the state courts. Because a rule requiring exhaustion of all claims furthers the purposes underlying the habeas statutes, we hold that a district court must dismiss such "mixed petitions," leaving the prisoner with the choice of returning to state court to exhaust his claims or of amending or resubmitting the habeas petition to present only exhausted claims to the district court.

Id. at 510 (emphasis added).

It is clear from the record in this case that Curls has not exhausted all the various grounds for relief she has alleged. In addition, the court notes that Curls has not responded to Respondent's motion to dismiss. This constitutes a waiver of objection to the motion, and a confession of the matters raised by the motion. See Local Rule 15(A).

Thus, for all the above reasons, Curls' petition for a writ of habeas corpus is hereby dismissed.

IT IS SO ORDERED this 12th day of February, 1993.



JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON

DATE 2-16-93

FILED

FEB 12 1993

Richard L. Lawrence, Court Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GAS ENERGY DEVELOPMENT,
COMPANY, an Oklahoma
corporation,

Plaintiff,

vs.

Case No. 92-C-1044-B

TRIUMPH NATURAL GAS, INC.,
a Delaware corporation, and
TRIUMPH GAS MARKETING CO.
f/k/a TRANSTATE GAS SERVICE
COMPANY, a Texas corporation,

Defendants.

STIPULATION OF DISMISSAL WITH PREJUDICE

The parties, through their undersigned counsel, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, stipulate to the dismissal, with prejudice, of their respective claims and counter-claims in the above captioned action. Each party is to bear their respective attorneys' fees and costs.

By: 

Jonathan C. Neff
CROWE & DUNLEVY
A Professional Corporation
Suite 500
321 South Boston
Tulsa, Oklahoma 74103-3313

Attorneys for Defendants
TRIUMPH NATURAL GAS, INC. and
TRIUMPH GAS MARKETING CO.

DAVID R. CORDELL, OBA #11272
SEAN H. McKEE, OBA #14277

By: 

David R. Cordell
2400 First National Tower
15 E. Fifth Street
Tulsa, Oklahoma 74103-4391
(918) 586-5711

Attorneys for Plaintiff,
GAS ENERGY DEVELOPMENT COMPANY

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE FEB 16 1993

CRAIG AVIATION, INC.,)

Plaintiff,)

v.)

Case No. 91-C-804-E

BIZJET INTERNATIONAL SALES AND)
SUPPORT, INC., CESSNA FINANCE)
CORPORATION, GENERAL FINANCIAL)
SERVICES, INC., AND LIFEGUARD)
AIR RESCUE, INC.,)

Defendant.)

FILED

FEB 12 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DEFAULT JUDGMENT

The Court has for its consideration BizJet International Sales & Support, Inc.'s ("BizJet"), motion for a default judgment against defendant General Financial Services, Inc. ("General Financial")., a third-party defendant herein. Upon consideration of the Motion and for good cause shown,


IT IS HEREBY ORDERED, ADJUDGED AND DECREED that General Financial was properly served with copies of this Court's order directing it to appear, plead, answer or move in accordance with 28 U.S.C. § 1655 and Bizjet's Amended Answer and Counterclaims on May 4, 1992. However, General Financial has failed to appear, plead, answer or move as directed by this Court and is thus in default.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Bizjet's motion for a default judgment against General Financial is granted.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that any right, title or interest that General Financial may have in the General

69

Electric aircraft engines with serial numbers 240C122 and 240C007A (the "Engines") is extinguished and Bizjet's title to the Engines is quieted as against any right, title or interest claimed by General Financial to these Engines.


JAMES O. ELLISON, Chief Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FLB 11 1993

IN RE:

NTC OF AMERICA, INC.,
I.D. #73-0734062,

Debtor.

NTC OF AMERICA, INC.,

Plaintiff,

v.

DESTINY INDUSTRIES, INC.,

Defendant.

Case No. 90-00490-W
(Chapter 11)

Adversary No. 90-0218-W

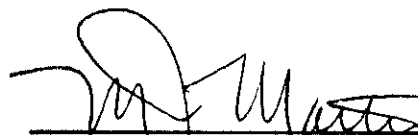
District Court No. 90-C-739-E

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

FLB 12 1993

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

Plaintiff NTC of America, Inc., and Defendant Destiny Industries, Inc., by and through their attorneys of record, and pursuant to Fed.R.Civ.P. 41(a)(1), stipulate to the dismissal of, and do hereby dismiss the above-captioned action with prejudice, each party to bear its own costs and attorneys' fees.



Melinda J. Martin

MARTIN & SHELTON
320 South Boston, Suite 905
Tulsa, Oklahoma 74103
(918) 584-1880

Attorneys for Plaintiff
NTC OF AMERICA, INC.



Andrew R. Turner, OBA #9125

CONNER & WINTERS

A Professional Corporation

2400 First National Tower

15 East Fifth Street

Tulsa, Oklahoma 74103-4391

(918) 586-5711

Attorney for Defendant

DESTINY INDUSTRIES, INC.

P. 2 92 C. 739. E
Jl. Stip for Disml

ENTERED ON DOCKET

DATE 2-12-93

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ONE 1984 4-DOOR MERCEDES
BENZ, VIN WBD4A24A6EAO26714,

and

ONE 1981 PORSCHE,
VIN WPOAA0918BS120908,

Defendants.

CIVIL ACTION NO. 92-C-726-B

U.S. DISTRICT COURT


**STIPULATION FOR DISMISSAL
OF DEFENDANT 1984 MERCEDES BENZ**

Pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure the plaintiff, United States of America, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Catherine J. Depew, Assistant United States Attorney, and Ruth Ann Blair, as Trustee of the Revocable Inter Vivos Trust of Ruth Watson Dittman, the record title owner to said vehicle, by and through her attorney G. Tomas Rhodus, as Claimant to the defendant 1984 4-Door Mercedes, hereby stipulate to dismissal of the defendant 1984 Mercedes Benz from this cause of action, with prejudice and without costs.

TONY M. GRAHAM

United States Attorney

Executed this 10th
day of February, 1993.


CATHERINE J. DEPEW, OBA #3836
Assistant United States Attorney
3600 United States Courthouse
333 West Fourth Street
Tulsa, Oklahoma 74104
(918) 581-7463

Executed this 10th
day of February 1993.

REVOCABLE INTER VIVOS TRUST OF
RUTH WATSON DITTMAN/Ruth Ann Blair,
Trustee, Claimant

By: 
GERALD L. HILSHER, Attorney
for Claimant

N: \UDD\CHOOK\FC\BLAIR2\02778

ENTERED ON DOCKET

DATE 2-12-93

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 11 1993

Richard H. Lawrence, Court Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CIVIL ACTION NO. 92-C-726-B

ONE 1984 4-DOOR MERCEDES
BENZ, VIN WDBDA24A6EAO26714,

and

ONE 1981 PORSCHE,
VIN WPOAA0918BS120908,

Defendants.

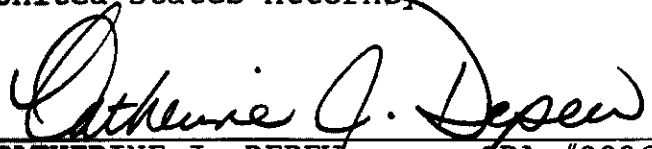
**NOTICE OF DISMISSAL
OF 1981 PORSCHE**

Plaintiff, the United States of America, by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Catherine J. Depew, Assistant United States Attorney, hereby gives notice that the 1981 Porsche, VIN WPOAA0918BS120908, is hereby dismissed with prejudice and without costs, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure for the reason that the defendant 1981 Porsche was never located and thereby was never seized and that there is little likelihood of locating this vehicle.

DATED this 10th day of February 1993.

Respectfully submitted,


TONY M. GRAHAM
United States Attorney


CATHERINE J. DEPEW, DBA #3836
Assistant United States Attorney
3900 United States Courthouse
333 West Fourth Street
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the within and foregoing Notice of Dismissal has been mailed this 11th day of February 1993, with postage fully prepaid thereon, to the following:

G. TOMAS RHODUS
Attorney at Law
Looper, Reed, Mark & McGraw
4300 Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201


CATHERINE J. DEPEW

CJD/ch/

N: \UDD\CHOOK\FC\BLAIR2\02779

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET

DATE FEB 12 1993

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CLARENCE E. HAYDEN a/k/a CLARENCE
EUGENE HAYDEN; LINDA C. HAYDEN
a/k/a LINDA CAROL HAYDEN;
JOLENE M. HAYDEN; COUNTY
TREASURER, Nowata County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Nowata County,
Oklahoma,

Defendants.

FILED

FEB 11 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

) CIVIL ACTION NO. 91-C-940-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 11th day
of Feb., 1993. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Wyn Dee Baker, Assistant United States
Attorney; and the Defendants, Clarence E. Hayden a/k/a Clarence
Eugene Hayden, Jolene M. Hayden, Linda C. Hayden a/k/a Linda
Carol Hayden, County Treasurer and Board of County Commissioners,
Nowata County, Oklahoma, appear not, but make default.

The Court, being fully advised and having examined the
court file, finds that the Defendant, Clarence E. Hayden a/k/a
Clarence Eugene Hayden, acknowledged receipt of Summons and
Complaint on December 16, 1991, through his attorney, Stephen B.
Riley; the Defendant, Jolene M. Hayden, acknowledged receipt of
Summons and Complaint on January 2, 1992, through her attorney,
Stephen B. Riley; the Defendant, County Treasurer, Nowata County,
Oklahoma, acknowledged receipt of Summons and Complaint on

December 17, 1991; and the Defendant, Board of County Commissioners, Nowata County, Oklahoma, acknowledged receipt of Summons and Complaint on December 17, 1991.

An Amended Complaint was filed by leave of court and mailed to all Defendants whose addresses were known on February 10, 1992, and a Second Amended Complaint was filed by leave of court and mailed to all Defendants whose addresses were known on October 14, 1992.

The Court further finds that the Defendant, Linda C. Hayden a/k/a Linda Carol Hayden, was served by publishing notice of this action in the Nowata Star, a newspaper of general circulation in Nowata County, Oklahoma, once a week for six (6) consecutive weeks beginning November 19, 1992, and continuing to December 24, 1992, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, Linda C. Hayden a/k/a Linda Carol Hayden, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, Linda C. Hayden a/k/a Linda Carol Hayden. The Court conducted an inquiry into the sufficiency of the service by

publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Farmers Home Administration, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Wyn Dee Baker, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to her present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendant served by publication.

The Court further finds that on April 15, 1987, Clarence Eugene Hayden filed his voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 87-00982, was discharged on October 28, 1987, and the case was closed on March 10, 1989.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Nowata County, Oklahoma, within the Northern Judicial District of Oklahoma:

The S 1/2 of the NE 1/4; and the N 1/2 of the SE 1/4; and The SE 1/4 of the NW 1/4; of Section 16, Township 28 North, Range 16 East.

The Court further finds that on May 7, 1980, the Defendants, Clarence E. Hayden and Linda C. Hayden, executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$42,100.00, payable in eight installments, with interest thereon at the rate of 12 percent (12%) per annum.

The Court further finds that on July 27, 1981, the Defendants, Clarence E. Hayden and Linda C. Hayden, executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$19,990.00, payable in yearly installments, with interest thereon at the rate of 15 percent (15%) per annum.

The Court further finds that on July 27, 1981, the Defendants, Clarence E. Hayden and Linda C. Hayden, executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$7,160.00, payable in yearly installments, with interest thereon at the rate of 5 percent (5%) per annum.

The Court further finds that on September 2, 1981, the Defendants, Clarence E. Hayden and Linda C. Hayden, executed and delivered to the United States of America, acting through the Farmers Home Administration, an Assumption Agreement, in which Clarence E. Hayden and Linda C. Hayden assumed a Promissory Note dated April 11, 1980 from Kenneth G. Hayden and Sharon K. Hayden to the United States of America, acting through the Farmers Home Administration, in the amount of \$73,000.00, payable in yearly

installments, plus accrued interest in the amount of \$4,796.00, with interest at the rate of 10 per cent per annum.

The Court further finds that on September 2, 1981, the Defendants, Clarence E. Hayden and Linda C. Hayden, executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$24,750.00, payable in yearly installments, with interest thereon at the rate of 13 1/4 percent (13.25%) per annum.

The Court further finds that on September 2, 1981, the Defendants, Clarence E. Hayden and Linda C. Hayden, executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$10,000.00, payable in yearly installments, with interest thereon at the rate of 15 percent (15%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Clarence E. Hayden and Linda C. Hayden, executed and delivered to the United States of America, acting through the Farmers Home Administration, a real estate mortgage dated September 2, 1981, and recorded on September 2, 1981, in Book 529, Page 414, in the records of Nowata County, Oklahoma, covering the following described property, situated in the State of Oklahoma, Nowata County:

The S 1/2 of the NE 1/2 [sic]; and the N 1/2 of the SE 1/4; and The SE 1/4 of the NW 1/4; of Section 16, Township 28 North, Range 16 East.

The Court further finds that said mortgage incorrectly describes the subject property as including the S 1/2 of the NE 1/2 rather than the S 1/2 of the NE 1/4 due to a scrivener's error, and that the intent of the parties was to set forth the correct legal description as follows:

The S 1/2 of the NE 1/4; and the N 1/2 of the SE 1/4; and The SE 1/4 of the NW 1/4; of Section 16, Township 28 North, Range 16 East.

The Court further finds that the above-described mortgage should be conformed with the intent of the parties as indicated by the Joint Tenancy Warranty Deed dated September 2, 1981 and recorded on September 2, 1981 in Book 529, Page 413 in the records of Nowata County, Oklahoma.

The Court further finds that on May 20, 1982, the Defendants, Clarence E. Hayden and Linda C. Hayden, executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of \$10,850.00, payable in two installments, with interest thereon at the rate of 15 percent (15%) per annum.

The Court further finds that the Defendants, Clarence E. Hayden a/k/a Clarence Eugene Hayden and Linda C. Hayden a/k/a Linda Carol Hayden, made default under the terms of the aforesaid notes and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof, the Defendants, Clarence E. Hayden a/k/a Clarence Eugene Hayden and Linda C. Hayden a/k/a Linda Carol Hayden, are indebted to the Plaintiff in the principal sum of \$162,608.50, plus accrued interest in the amount of \$141,364.42

as of September 20, 1990, plus interest accruing thereafter at the rate of \$51.4806 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$495.40 (\$487.40 publication fees, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, Clarence E. Hayden a/k/a Clarence Eugene Hayden, Jolene M. Hayden, Linda C. Hayden a/k/a Linda Carol Hayden, County Treasurer and Board of County Commissioners, Nowata County, Oklahoma, are in default and have no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendants, Clarence E. Hayden a/k/a Clarence Eugene Hayden and Linda C. Hayden a/k/a Linda Carol Hayden, in the principal sum of \$162,608.50, plus accrued interest in the amount of \$141,364.42 as of September 20, 1990, plus interest accruing thereafter at the rate of \$51.4806 per day until judgment, plus interest thereafter at the current legal rate of 3.45 percent per annum until paid, plus the costs of this action in the amount of \$495.40 (\$487.40 publication fees, \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the subject mortgage dated September 2, 1981 and recorded on

September 2, 1981 in Book 529, Page 414 in the records of Nowata County, Oklahoma be conformed with the intent of the parties to recite the correct legal description of the subject property as follows:

The S 1/2 of the NE 1/4; and the N 1/2 of the SE 1/4; and The SE 1/4 of the NW 1/4; of Section 16, Township 28 North, Range 16 East.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Clarence E. Hayden a/k/a Clarence Eugene Hayden, Jolene M. Hayden, Linda C. Hayden a/k/a Linda Carol Hayden, County Treasurer and Board of County Commissioners, Nowata County, Oklahoma have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, according to Plaintiff's election with or without appraisement, the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

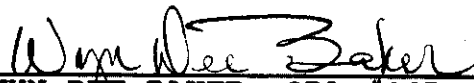
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.


UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


WYN DEE BAKER, OBA #465
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

Judgment of Foreclosure
Civil Action No. 91-C-940-E

WDB/esr

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 11 1993

Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DANNY HAROLD ASHTON,

Plaintiff,

vs.

No. 93-C-103-E

STATE OF OKLAHOMA,

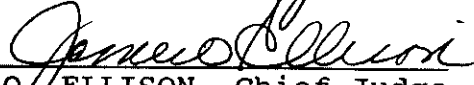
Defendant.

FEB 12 1993

ORDER

Plaintiff has filed two petitions with the court. One is entitled "Petition for Investigation of Illegal Activity with Request: For Writt (sic) of Habeous (sic) corpus, Delay of Sentencing, Dismissal of Conviction." The other is entitled "Petition for Order of Restraint." Federal and Local Rules do not provide for the filing of such documents, they are not competent legal pleadings, and they are not on proper court-authorized forms. Further, Plaintiff has not paid a filing fee or moved to proceed in forma pauperis. Plaintiff's petitions are hereby dismissed without prejudice.

SO ORDERED THIS 11th day of February, 1993.


JAMES O. ELLISON, Chief Judge
UNITED STATES DISTRICT COURT

ENTERED ON DOCKET

DATE 2/11/93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WILLIAM A. MEHOJAH and
FREDRICKA LOU MEHOJAH, husband
and wife,

Plaintiffs,

vs.

CHARLES R. DRUMMOND,
individually, and CHARLES R.
DRUMMOND, as representative of
the R.C. DRUMMOND WEST RANCH
TRUST a/k/a THE DRUMMOND RANCH,

Defendants.

Case No. 92-C-009-B ✓

FILED
FEB 8 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Before the Court for consideration are Plaintiffs' Motion to Strike From Jury Setting and Amended Motion to Dismiss and Defendants' Application to Strike Settlement Conference.

Plaintiffs ask the Court to strike this matter from the February 16, 1993, jury docket or dismiss this matter without prejudice. In support of this motion, Plaintiffs state that discovery has not been completed¹ due to "inadvertent circumstances" and that "[a]ttorney Gambill is in the British West Indies and attorney Withiam is on his way to New Zealand."


Defendants "vehemently" object to a dismissal of this suit unless Plaintiffs are ordered to pay Defendants attorney's fees and costs incurred up to this point. Defendants contend that a dismissal at this late date would be unfair to the Defendants, who have incurred substantial expense in preparation for trial.

¹ The discovery cutoff for this case was October 2, 1992.

Defendants also contend that Plaintiff has failed to produce any witness to establish Defendants' liability.²

Due to the parties inability to agree on a dismissal of this matter and the late date of Plaintiffs' request, the Plaintiff's motion to dismiss without prejudice is hereby DENIED; the trial date for this matter is hereby rescheduled for February 22, 1993; Defendants' application to strike settlement conference is hereby GRANTED.

IT IS SO ORDERED THIS 8th DAY OF FEBRUARY, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

² At the December 18, 1992, pretrial conference, Plaintiff's counsel represented to the Court that a neighbor of the Defendant would testify as to matters establishing Defendants' liability. Based on this representation, Plaintiff's counsel withdrew his request to file a dispositive motion. Defense counsel now states that no such witness has been identified or produced for deposition despite numerous requests.

DATE 2/11/93

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 8 1993

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMARAYMOND L. WOFFORD, and
MILDRED E. WOFFORD,

Plaintiffs,

v.

ST. JOHN MEDICAL CENTER, et al.,

Defendants.

92-C-1084-B

ORDER

This order pertains to plaintiffs' Motion to Remand (Docket #6)¹ and the Response to Plaintiffs' Motion to Remand (#15). This case was removed to this court on November 25, 1992, by defendant The American National Red Cross ("Red Cross"). The Notice of Removal stated that the remaining defendants did not object to removal. On December 4, 1992, plaintiffs made a Demand for Jury (#4), but reserved their right to seek remand to state court. On December 16, 1992, plaintiffs moved to remand the case to state court, because defendant Red Cross failed to file notice of removal within thirty days after receiving the summons and petition initiating plaintiffs' claims as required by 28 U.S.C. § 1446(b).² In addition, plaintiffs argued that removal was improper because the remaining

¹ "Docket numbers" refer to numerical designations assigned sequentially to each pleading, motion, order, or other filing and are included for purposes of record keeping only. "Docket numbers" have no independent legal significance and are to be used in conjunction with the docket sheet prepared and maintained by the United States Court Clerk, Northern District of Oklahoma.

² Title 28 of the U. S. Code, § 1446(b), states:

(b) The notice of removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an

defendants did not consent to it in writing within the thirty-day period.

Red Cross filed a Motion for Partial Summary Judgment [sic] (#7) on December 18, 1992. On December 30, 1992, defendants Frank Fore, M.D. ("Fore") and St. John Medical Center filed Notices of Consent of Removal (#9 and #10). On January 4, 1993, Fore filed a Request for Scheduling Conference (#12) and on January 7, 1993, plaintiffs filed a Confession of Motion (#13), confessing the Motion for Partial Summary Judgment of Red Cross pertaining to plaintiffs' claim of liability based upon the doctrine of strict liability in tort. On January 19, 1993, Red Cross responded to plaintiffs' Motion to Remand (#15), claiming defects in the removal have been waived by plaintiffs' demand for jury trial and confession of the Motion for Partial Summary Judgment.

While compliance with the removal time limit is not a jurisdictional prerequisite, the requirement is mandatory and may be insisted upon, absent waiver, by the party seeking remand. McLeod v. Cities Service Co., 233 F.2d 242, 244 (10th Cir. 1956). There is a trend to limit removal jurisdiction, and removal statutes are strictly construed against removal. Brown v. Demco, Inc., 792 F.2d 478, 482 (5th Cir. 1986).

Plaintiffs served Red Cross with a summons and petition on August 4, 1992, served defendant St. John Medical Center, Inc. on August 5, 1992, and served defendant Fore on September 1, 1992. Red Cross failed to file its Notice of Removal until one hundred and thirteen days after it received service in the case. The notice was filed well beyond the thirty-day limit set in § 1446(b).

amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable, except that a case may not be removed on the basis of jurisdiction conferred by section 1332 of this title more than 1 year after commencement of the action.

In addition, all defendants who are properly joined and served must join in the removal petition and failure to do so renders the petition defective. Getty Oil Corp. v. Insurance Co. of N. Amer., 841 F.2d 1254, 1262 (5th Cir. 1988). The mere unsupported statement by Red Cross that the remaining defendants did not object to removal does not satisfy the statutory filing requirement. Knickerbocker v. Chrysler Corp., 728 F.Supp. 460, 462 (E.D.Mich. 1990); Getty Oil Corp., 841 F.2d at 1262 ("This rule, which is followed by district courts in the Circuit and others, promotes unanimity among the defendants without placing undue hardships on subsequently served defendants."). "This does not mean that each defendant must sign the original notice of removal, but there must be some timely 'written indication' from each served defendant, or from some representative [of defendant], showing that the defendant has actually consented to such removal.... Such a requirement serves the purpose of binding the consenting defendant on the record." Luckett v. Harris Hospital - Fort Worth, 764 F.Supp. 436, 442, 442 n.15 (N.D.Tex. 1991).

There are instances in which a plaintiff may waive its right to object to untimely removal of an action. "The type of post-removal conduct that has been held to constitute waiver of the right to remand is "affirmative conduct or unequivocal assent of a sort which would render it offensive to fundamental principles of fairness to remand."" Owens v. General Dynamics Corp., 686 F.Supp. 827, 830 (S.D.Cal. 1988) (quoting Intercoastal Refining Co., Inc. v. Jalil, 487 F.Supp. 606 (S.D.Tex. 1980), which quoted Maybruck v. Haim, 290 F.Supp. 721 (S.D.N.Y. 1968)). The Owens court found that plaintiffs' filing of a jury demand on the same day as they served defendants with a motion to remand could

not be considered unequivocal assent to the court's jurisdiction which would render it unfair to remand the case. "Affirmative acts which are deemed to manifest a party's unequivocal assent to the court's jurisdiction must not be measured by a mere mechanical test. Rather, such acts must demonstrate an intent by the party to use the court's jurisdiction for adjudication of a substantial right." 686 F.Supp. at 830.

The court in Student A. V. Mercho, 710 F.Supp. 267, 268 (N.D.Cal. 1989), also concluded that plaintiff did not waive her right to move for remand by filing a demand for jury trial, noting that Fed.R.Civ.Pro. 81(c) requires that such a demand be filed within ten days of removal and plaintiff had to act promptly to protect that right after removing the case.


In Lanier v. American Bd. of Endodontics, 843 F.2d 901, 905 (6th Cir.), cert. denied, 488 U.S. 926 (1988), the court concluded that the plaintiff waived her right to object to removal by engaging in the following: "... plaintiff entered into stipulations, filed requests for discovery, sought to amend her complaint, filed a new lawsuit against the defendant in the federal court, demanded trial by jury, and proceeded with discovery". The court in Wade v. Fireman's Fund Ins. Co., 716 F.Supp. 226, 232 (M.D.La. 1989), found that plaintiff waived his right to object to removal by allowing the case to remain on the district court's docket for six months, attending status conferences, and participating in discovery. In Barcena v. State of Illinois, Dept. of Insur., 1992 WL 186068 (N.D.Ill 1992), the court found that plaintiff had not waived his right to seek remand by seeking to impose sanctions against [the defendant's] attorneys, as the motion for sanctions was made in conjunction with the motion to remand. Furthermore, the plaintiff made his motion for remand within

thirty days of the notice of removal and did not conduct discovery or engage in other such affirmative conduct during the thirty-day period. Id.

Plaintiffs have not engaged in conduct showing unequivocal assent to the court's jurisdiction by demanding a jury trial and confessing the Motion for Partial Summary Judgment. It has not entered into stipulations, participated in discovery, sought to amend its complaint, or attended any status conferences. In fact, as Red Cross notes, it has not responded in any way to Fore's Request for a Scheduling Conference (#12), filed on January 4, 1993.

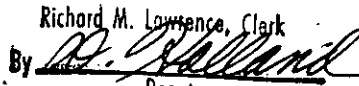
Plaintiffs' Motion to Remand (Docket #6) is granted and this case is remanded to the District Court for Tulsa County. The status and scheduling hearing set for 2:30 p.m. on February 11, 1993 is stricken.

Dated this 8th day of February, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

United States District Court)
Northern District of Oklahoma) SS.

I hereby certify that the foregoing
is a true copy of the original on file
in this Court.

Richard M. Lawrence, Clerk
By 
Deputy

ENTERED ON DOCKET

DATE 2-11-93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

FEB 15 1993

Richard M. Lawrence, Court Clerk
U.S. DISTRICT COURT

LINDA WALTON, formerly)

LINDA BJELKO,)

Plaintiff,)

-v-)

REGAL MOTORS, INC.,)

Defendant.)

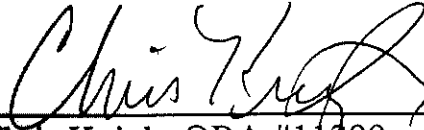
Case No. 92-C-644-B

VOLUNTARY DISMISSAL BY STIPULATION

COME NOW the Plaintiff and the Defendant by and through their respective attorneys of records, Larry Oliver and Chris Knight, and stipulate to the dismissal of this action. The parties show the Court that:

1. This voluntary dismissal is made pursuant to Rule 41 (A) (1) (ii);
2. This stipulation of dismissal is signed by all parties who have appeared in this action;
3. This action was settled by the parties under the terms of an offer to confess made by the Defendant; and,
4. This dismissal is with prejudice.

WHEREFORE the parties request that the Court accept this stipulation of dismissal and that this case be stricken from the Court's docket.



Chris Knight OBA #11390
ATTORNEY FOR REGAL MOTORS, INC.
717 South Houston, Suite 508
Tulsa, Oklahoma 74127

A handwritten signature in cursive script, appearing to read "Larry L. Oliver", is written over a horizontal line.

Larry L. Oliver OBA #6769
ATTORNEY FOR LINDA WALTON,
FORMERLY LINDA BJELKO
2211 East Skelly Drive
Tulsa, Oklahoma 74105

DATE 2/11/93

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WILLIAM A. MEHOJAH and
FREDRICKA LOU MEHOJAH, husband
and wife,

Plaintiffs,

vs.

CHARLES R. DRUMMOND,
individually, and CHARLES R.
DRUMMOND, as representative of
the R.C. DRUMMOND WEST RANCH
TRUST a/k/a THE DRUMMOND RANCH,

Defendants.

Case No. 92-C-009-B ✓

FILED
FEB 8 1993
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER

Before the Court for consideration are Plaintiffs' Motion to Strike From Jury Setting and Amended Motion to Dismiss and Defendants' Application to Strike Settlement Conference.

Plaintiffs ask the Court to strike this matter from the February 16, 1993, jury docket or dismiss this matter without prejudice. In support of this motion, Plaintiffs state that discovery has not been completed¹ due to "inadvertent circumstances" and that "[a]ttorney Gambill is in the British West Indies and attorney Withiam is on his way to New Zealand."

Defendants "vehemently" object to a dismissal of this suit unless Plaintiffs are ordered to pay Defendants attorney's fees and costs incurred up to this point. Defendants contend that a dismissal at this late date would be unfair to the Defendants, who have incurred substantial expense in preparation for trial.


¹ The discovery cutoff for this case was October 2, 1992.

28

Defendants also contend that Plaintiff has failed to produce any witness to establish Defendants' liability.²

Due to the parties inability to agree on a dismissal of this matter and the late date of Plaintiffs' request, the Plaintiff's motion to dismiss without prejudice is hereby DENIED; the trial date for this matter is hereby rescheduled for February 22, 1993; Defendants' application to strike settlement conference is hereby GRANTED.

IT IS SO ORDERED THIS 8th DAY OF FEBRUARY, 1993.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

² At the December 18, 1992, pretrial conference, Plaintiff's counsel represented to the Court that a neighbor of the Defendant would testify as to matters establishing Defendants' liability. Based on this representation, Plaintiff's counsel withdrew his request to file a dispositive motion. Defense counsel now states that no such witness has been identified or produced for deposition despite numerous requests.

ENTERED ON DOCKET

DATE 2-11-93

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
FEB 9 1993

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DONALD EUGENE HAWKES,)
)
Plaintiff,)
)
v.)
)
JACK COWLEY, et al,)
)
Defendants.)

92-C-694-B

ORDER

Now before this Court is Respondent's Motion To Dismiss (docket #5). The issue is whether Petitioner Donald Eugene Hawkes has abused the writ pursuant to Rule 9(b) of the Rules Governing Section 2254 Cases, 28 U.S.C. §2254.¹ For the reasons discussed below, the Respondent's motion is **granted**.

I. Summary of Facts/Procedural History

On October 19, 1979, Hawkes was convicted of first-degree rape, assault and intent to kill after former conviction of felonies. He received a 35-year prison sentence. Petitioner filed a direct appeal and did exhaust his state remedies.

On March 19, 1986, he filed a habeas petition with this Court.² On June 18, 1986, this Court denied the habeas petition on its merits. See, Exhibit B of Brief In Support Of Motion To Dismiss (docket #6).

¹ Rule 9(b) states: "A second or successive petition may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on the merits or, if new or different grounds are alleged, the judge finds that the failure of the petitioner to assert those grounds in a prior petition constituted an abuse of the writ."

² Hawkes alleged 1) erroneous admission of out-of-state warrant into evidence; 2) violation of due process; 3) equal protection rights; and 4) erroneous jury instructions. See 86-C-170-B.

On August 6, 1992, Hawkes filed the instant habeas petition. He alleges that the "state failed to meet its burden of proof as to the elements of the corpus delicti and probable cause during the preliminary hearing." *See, Petition (docket #1)*. Shortly after Hawkes filed the Petition, Respondent filed this Motion To Dismiss.

II. Legal Analysis

The issue is whether Hawkes has abused the writ. The first question is whether Respondent has met its burden in pleading abuse of the writ. *McCleskey v. Zant*, 111 S.Ct. 1454, 1470 (1991). Upon review, the undersigned finds that the burden has been met.³ As a result, the burden shifts to Hawkes to disprove abuse. *Id.* Explains the Supreme Court:

To excuse his failure to raise the claim earlier, he [Hawkes] must show cause for failing to raise it and prejudice therefrom as those concepts have been defined in our procedural default decisions...If petitioner cannot show cause, the failure to raise the claim in an earlier petition may nonetheless be excused if he...can show that a fundamental miscarriage of justice would result from a failure to entertain the claim. *Id.*⁴

To establish cause for failing to bring the claim in the 1986 habeas petition, Hawkes must show "some external impediment" that prevented him from constructing or raising the claim. *Rodriguez v. Maynard*, 948 F.2d 684 (10th Cir.1991).

Hawkes asserts two reasons as to why he did not raise his current claim in his 1986 habeas petition. He first attempts to establish cause by arguing that he received ineffective

³ The *Zant* Court writes that "the government satisfies this burden if, with clarity and particularity, it notes petitioner's prior writ history, identifies the claims that appear for the first time, and alleges that petitioner has abused the writ." *Id.* at 1470. In this case, Respondent clearly identified Hawkes' claims in his first habeas, discussed Hawkes' prior writ history and stated that Hawkes had abused the writ. *See Respondent's Brief*, pages 2-5 (docket #6).

⁴ "Where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a federal habeas court may grant the writ even in the absence of a showing of cause." *Murray v. Carrier*, 477 U.S. 478 (1986). Hawkes has made no colorable showing on this issue. Therefore, a fundamental miscarriage of justice will not result if this Court does not examine his habeas petition on the merits.

assistance of counsel during trial, on **appeal** and at the time of his first habeas petition. Those claims do not constitute cause.⁵

Hawkes' second reason for not **including** the claim in the 1986 petition is what he describes as a change in existing law. A petitioner may be excused for failing to raise a claim in a prior habeas petition if the law has been substantively changed in the interim. *Worthen v. Kaiser*, 952 F.2d 1266, 1268 (10th Cir.1992).

Hawkes asserts that the law supporting his claim was announced on June 13, 1989 in *State v. Hammond*, 775 P.2d 826 (Okla. Cr. 1989).⁶ He appears to argue that the case established a rule of law authorizing a Motion To Quash For Insufficient Evidence.⁷ See *Petitioner's Objection*, page 4. Had this rule been available at the time of his preliminary hearing -- or at the time of the 1986 federal habeas petition -- Hawkes argues that he would have raised the instant claim earlier.

This Court finds Hawkes' argument to be without merit. In *Hammond*, a defendant was charged with Assault and Battery. On the morning of his trial, he filed a Motion To Quash the information based on insufficient evidence. The trial judge sustained the Motion To Quash, holding that the evidence presented was insufficient. The State appealed the trial judge's decision pursuant to 22 Okla. Stat. §§ 1053(1) and 1053(3). The Oklahoma Court of Criminal Appeals, however, held that 22 Okla. Stat. §§493 and 504 did not

⁵ Hawkes has made no showing that ineffective assistance of counsel during trial and on appeal constitutes cause for his failure to add the instant claim in his 1986 habeas petition. In addition, he cannot establish cause because of the conduct of an inmate legal assistance prior to his first habeas petition. See *Whiddon v. Dugger*, 894 F.2d 1266, 1267 (11th Cir. 1990)(poor advice from an inmate law clerk will not establish petitioner's claim of cause.)

⁶ This ruling came some three years after Hawkes' first habeas petition in 1986.

⁷ Pinpointing Hawkes' argument is difficult. See *Petitioner's Objection To Respondent Motion To Dismiss* (docket #8).

authorize a Motion To Quash For Insufficient Information. As a result, the State could not appeal the trial judge's decisions under §§1053(1) and 1053(3). *Id.* at 828.

The case, contrary to Hawkes' position, does not establish a Motion To Quash For Insufficient Evidence. In fact, it states the contrary, at least, in relationship to 22 Okla. Stat. §§493 and 504: "a motion to quash for insufficient evidence is not authorized by Section 493 or 504." *Id.* at 828. The case also notes that motions to quash for insufficient evidence have been a regular practice in Oklahoma courts "for many years." *Id.* at 827. Therefore, this Court finds that *Hammond* is not a change in the law constituting cause for Hawkes' failure to raise the instant claim in the 1986 petition.

III. Conclusion

Hawkes filed a habeas petition with this Court in 1986. That petition was dismissed on its merits. Six years later, Hawkes files the instant habeas petition, raising a claim not raised in the 1986 petition. However, since he has not shown cause and prejudice for his failure to raise the new claim in his 1986 Petition, the Court finds that he has abused the writ under Rule 9(b) of the Rules Governing Section 2254 Cases. Therefore, Respondent's Motion To Dismiss is GRANTED.

SO ORDERED THIS 9th day of Feb., 1993.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE